

## **Broadcast Flag Initial Table A Population and Effective Date**

### **A. Initial Table A Population**

The FCC should populate Table A concurrent with publication of the Final Rule. The population could be based on the following: (a) any digital output technology specifically identified and approved in the publicly available PHILA or DFAST license forms; (b) any recording technology specifically identified and approved as an authorized recording technology in either such license form or specifically identified and approved in the publicly available license forms of any digital output technology described in (a).

If appropriate to justify this initial population as an interim matter, the FCC could (1) provide that such initial population authority expires on a date certain, or (2) provide for a special removal procedure on petition during a specified period, (3) in either case without prejudice to (i) the continued distribution of devices made before that date in the ordinary course of business in reliance on the initial population, (ii) the enjoyment of devices purchased before that date by consumers, and (iii) the attainment of Table A by the same technologies pursuant to the normal procedures stated elsewhere in the rules for attaining Table A. Permanent population of Table A would proceed as per Sections X.20 and X.21 of the Criteria, subject to disqualification or removal under Section X.23.

### **B. Effective Date**

The Commission's rules are hereby amended as set forth in [an Appendix setting forth the new rules], and shall become effective as follows:

1. (a) Subject to Paragraphs 2 and 3 below, the regulation shall become effective the day that is 18 months after [the date of adoption of the Flag regulation].

(b) Paragraph 1(a) applies but is not limited to any product that would otherwise be of the same kind, nature or description as a product made, distributed, sold, or imported prior to such effective date, except with respect to the sale, import or distribution of products that are of the same model as products lawfully sold in the United States in the ordinary course of business before such effective date. In the case of products covered by the exception in this paragraph 1(b), the effective date is the date that is 24 months after [the date of adoption of the Flag regulation].

2. (a) With respect to the manufacture, sale, import, or distribution of any Demodulation Function, Covered Demodulator Product, Downstream Product, Modulation Function, or Covered Modulator Product that, in each case, is a Plug & Play Device or a device equipped with a DTV tuner pursuant to the DTV Tuner Mandate, section 15.117(i) of subpart B of part 15 of the Code of Federal Regulations: July 1, 2004, or such other date as the Commission shall provide as the earliest date for implementation of the DTV Tuner Mandate, but in no event later than 18 months from [the date of adoption of the Flag regulation].

(b) For purpose of paragraph 2(a), the term "Plug & Play device" means a unidirectional digital cable product including but not limited to unidirectional digital cable television, as defined in section 15.123(a) of subpart B of part 15 of the Code of Federal Regulations as amended on September 10, 2003, or any device that after October 9, 2003 is labeled with or marketed using the

term “digital cable ready” or other terminology that describes the device as “cable ready” or “cable compatible” or otherwise indicates that the device accepts a Point of Deployment module or conveys the impression that the device is compatible with digital cable service.

(c) For purpose of paragraph 2(a), neither the term “Plug & Play device” nor the term “device equipped with a DTV tuner pursuant to the DTV Tuner Mandate” shall be understood to apply to a device that is not equipped with any digital outputs. Further, for purpose of paragraph 2(a), neither the term “Plug & Play device” nor the term “device equipped with a DTV tuner pursuant to the DTV Tuner Mandate” shall be understood to apply to the sale, import or distribution of products that are of the same model as products lawfully sold in the United States in the ordinary course of business before the effective date identified in paragraph 2(a). Such devices shall be subject instead to the date for compliance provided in paragraph 1(a) above.

(d) If the Commission determines that a manufacturer has already committed itself to the manufacturing process for Plug & Play devices or devices subject to the DTV Tuner Mandate that are televisions, recorders, or other appliances intended to be sold to consumers for home use, without incorporating Broadcast Flag compliance therein, the Commission may grant a waiver of the effective date for such devices until a specified date which shall in no event extend beyond the time that the manufacturer’s commitment can reasonably be altered, or 18 months from [the date of adoption of the Flag regulation], whichever is earlier. For purposes of this subsection, a manufacturer is “committed” if it has already purchased parts that cannot be incorporated into a compliant device, and such parts no longer can be returned or sold for the full value paid; has already manufactured circuit boards for incorporation into such devices; or has already implemented a production line for such devices adapted specifically to such parts or boards; provided that a manufacturer shall not be deemed “committed” if the parts or devices in question can be made compliant or incorporated into a compliant product without substantial additional expense, other than that due solely to the need to comply with this regulation and that would not be incurred in a production process initially designed to ensure compliance with this regulation.

3. For sections X.2(c), X.13(b), X.20, and X.22 (to the extent they contain information collection requirements under the Paperwork Reduction Act of 1995): upon approval by OMB. The FCC will publish a document in the Federal Register announcing the effective date for those sections.